

More on Competent Summary Judgment Evidence: The Rule Does Not Just Apply to Affidavits

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We [previously wrote](#) about the requirements many jurisdictions impose for [affidavits or declarations submitted in conjunction with motions for summary judgment](#), including that they must be based on personal knowledge, show the affiant is competent to testify, and contain facts that would otherwise be admissible in evidence. In this installment, we explore whether that standard applies to other forms of evidence that may be used to support or oppose a motion for summary judgment, including deposition testimony and answers to interrogatories. In [McKenney v. United States](#), the Eleventh Circuit Court of Appeals answered that question in the affirmative with regard to interrogatory responses. After rejecting the plaintiffs' proffered evidence as insufficient to support summary judgment, the court pointed to a relevant interrogatory response in the record. The court observed that on summary judgment, a sworn interrogatory response is treated like an affidavit. However, conclusory affidavits lack probative value. The plaintiffs' interrogatory response had failed to provide any explanation or detail regarding how they arrived at the figures in the response. The plaintiffs had therefore failed to meet their burden of showing their entitlement to a tax exclusion and the grant of summary judgment in their favor was reversed. Like interrogatory responses, conclusory deposition testimony is not competent summary judgment evidence. In [Reddy v. Buttar](#), the defendant argued that the district court erred in entering summary judgment because there were genuine disputes of material fact regarding the existence of an arbitration agreement between the parties. The Fourth Circuit Court of Appeals affirmed, holding that the defendant had provided no evidence aside from his own conclusory deposition testimony to support his claim that the plaintiff had presented an incorrect or forged version of the agreement. At his deposition, the defendant had testified that he did not possess a copy of the claimed alternative agreement, did not know if it existed, and had made no effort to find it. The court explained that, to create a genuine dispute of material fact, the party opposing summary judgment must rely on more than conclusory allegations, and the defendant's unsupported claims did not "clear that threshold." In short, a party supporting or opposing a motion for summary judgment may not rely on conclusory evidence, whether that is in the form of an

affidavit, a sworn interrogatory response, or deposition testimony. As we stated previously, there is no shortcut for establishing the necessary facts on summary judgment. Litigants should ensure that they establish an adequate record, from initial discovery to depositions to finding the right affiant to support or oppose the motion.

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